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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SACRAMENTO

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through the CALIFORNIA CORPORATIONS COMMISSIONER,)	CASE NO.
)	
Plaintiff,)	COMPLAINT FOR CIVIL PENALTIES
)	(Fin. Code § 50501(a))
v.)	
)	
LONG BEACH MORTGAGE COMPANY, a Delaware corporation; and DOES 1 through 25, inclusive,)	
)	
Defendants.)	

Demetrios A. Boutris, California Corporations Commissioner (“Commissioner”), brings this action in the public interest in the name of the People of the State of California. The People of the State of California allege as follows:

JURISDICTION AND VENUE

1. Acting to protect the public from unlawful and unsound residential mortgage lending practices in violation of the California Residential Mortgage Lending Act (hereinafter referred to as the "CRMLA", California Financial Code section 50000 *et seq.*),¹ the Commissioner brings this action to assess and recover civil penalties pursuant to section 50501, subdivision (a).

¹ All further statutory references are to the Financial Code unless otherwise indicated.

3. Defendants Does 1 through 25 are persons, corporations, partnerships or other business entities who have done or will do acts otherwise alleged in this complaint. Plaintiff is informed and believes, and on such information and belief alleges, that Does 1 through 25, inclusive, at all times mentioned herein have acted and are continuing to act in concert with the other defendant named herein, and that each of them has participated in the acts and transactions which are the subjects of this complaint. The true names and capacities of Does 1 through 25, whether individual, corporate or otherwise, are unknown to plaintiff, who therefore sues these defendants under such fictitious names, pursuant to the provisions of Section 474 of the California Code of Civil Procedure. The plaintiff asks leave of the court to amend the complaint to allege the true names and capacities of these defendants at such time as the same have been ascertained.

4. Whenever any allegation is made in this Complaint to "Defendants" doing any act, the allegation shall mean the act of each Defendant acting individually, jointly and severally and the conspiring of these defendants to so act.

5. Whenever any allegation is made in this Complaint to any of the business entity defendants doing any act, the allegation shall mean acts done or authorized by the officers, directors, agents, and employees of the business entity defendant while actively engaged in the management, direction or control of the affairs of the business entity defendant, and while acting within the course and scope of their employment.

6. Under section 50302, the Commissioner conducts periodic routine examinations of the affairs of licensees to determine whether the licensees are in compliance with all statutes, rules

1 and regulations under the CRMLA. In or about December 1999, the Department of Corporations
2 ("Department") commenced the first regulatory examination of Long Beach under the CRMLA. The
3 Department found that, in four, or 21%, of approximately 19 loan transactions reviewed, Long
4 Beach had charged borrowers excess interest on loans for a period in excess of one day prior to the
5 loan closing, i.e., the recording of the mortgage or deed of trust. The range of the amounts that
6 borrowers were overcharged by Long Beach was between \$16.78 and \$270.53. The range of days
7 that interest was overcharged was between two and five. On or about May 8, 2000, the Department
8 communicated its findings by a regulatory letter addressed to the President of Long Beach. The
9 Department required Long Beach to make refunds to the four borrowers who were overcharged. In
10 June 2000, Long Beach represented to the Department that it had made the required refunds and was
11 "in the process of revising its policies and procedures to ensure that Long Beach staff reviews each
12 HUD-1² upon receipt for the specific purpose of verifying that the per diem charges are correct."

13 7. On or about September 20, 2001, the Department commenced a second regulatory
14 examination of Long Beach. Once again, the Department found that Long Beach had charged
15 borrowers interest on loans in excess of the amount authorized by statute, i.e., one day prior to loan
16 closing. This occurred in three, or 12%, of the 25 loans that were reviewed. The range of days that
17 interest was overcharged was between one and four days. The range of the amounts that were
18 overcharged was between \$113.12 and \$436.20. Again, the Department required Long Beach to
19 make refunds to the three borrowers. And further, because the same violations recurred after Long
20 Beach had promised to correct its problem, the Department directed Long Beach to review all loans
21 it had originated since the prior regulatory examination, i.e., December 14, 1999, up through January
22 31, 2002, and to refund the amount of excess interest to the borrowers charged excess interest during
23 the period.

24 8. In its response of March 14, 2002, Long Beach admitted that it had overcharged the
25 borrowers in the three loan files, as noted by the regulatory examination, and reported that it had
26 refunded the excess interest to the three borrowers. Long Beach further admitted that, of a total of
27 _____

28 ² HUD-1 means the statement of settlement charges in connection with either the purchase or the
refinancing (or other subordinate lien transaction) of 1- to 4-family residential property.

1 15,214 loans that it made from December 14, 1999, through January 31, 2002, Long Beach had
2 charged and received excess interest on 3,618 loans (23.8%), for an overcharge to borrowers of
3 \$625,757.22. Of the 3,618 loans, 1,039 were made between December 14, 1999, and December 31,
4 2000; 2,579 of these were made between January 1, 2001, and January 31, 2002. The range of days
5 that interest was overcharged was between one and 201. The range of the amount that borrowers
6 were overcharged by Long Beach was between \$4.19 and \$3,248.24.

7 9. Once again, Long Beach reported to the Department that it had implemented changes
8 in its policies and procedures that were necessary to prevent the charges of excess interest from
9 recurring in the future. Long Beach further claimed, as the reason for its failure to implement the
10 promised changes after the first examination, that Long Beach had experienced a significant change
11 in management following receipt of the previous regulatory letter. In fact, Long Beach had merged
12 with its current owner, Washington Mutual, Inc., as early as September 1999, before the first
13 regulatory examination, and the transition to new management occurred over an extended period of
14 time up to at least March 2001, well after Long Beach's commitment to correct the problem. The
15 new management either knew or should have known about the overcharges and about Long Beach's
16 commitment to the Department to correct the problem.

17 10. In June 2002, Long Beach represented that it had completed making the refunds of all
18 excess interest charged to the borrowers, in an amount of \$625,757.22. Attached as Exhibit "1" for
19 convenient reference is a chart summarizing the violations discovered to date through the self-audit.

20 **FIRST CAUSE OF ACTION FOR VIOLATIONS OF**

21 **FINANCIAL CODE SECTION 50204(i)**

22 **(Against all defendants)**

23 11. Plaintiff realleges and incorporates by reference paragraphs 1 through 10 of this
24 complaint as though fully set forth herein.

25 12. At all relevant times, section 50204, subdivision (i), provided that:

26 "A licensee may not do any of the following: . .

27 (i) Engage in any acts in violation of Section 17200 or 17500 of the Business and
28 Professions Code."

1 13. Section 17200 of the Unfair Competition Act (Business and Professions Code section
2 17200 *et seq.*; "UCA") provides that:

3 "As used in this chapter, unfair competition shall mean and include any unlawful, unfair or
4 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any
5 act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
6 Business and Professions Code."

7 14. Business and Professions Code section 17500 provides, in relevant part, that:

8 "It is unlawful for any person, firm, corporation or association, or any employee thereof with
9 intent directly or indirectly to dispose of real or personal property or to perform services,
10 professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into
11 any obligation relating thereto, to make or disseminate or cause to be made or disseminated before
12 the public in this state, or to make or disseminate or cause to be made or disseminated from this state
13 before the public in any state, in any newspaper or other publication, or any advertising device, or by
14 public outcry or proclamation, or in any manner or means whatever, any statement, concerning such
15 real or personal property or services, professional or otherwise, or concerning any circumstance or
16 matter of fact connected with the proposed performance or disposition thereof, which is untrue or
17 misleading, and which is known, or which by the exercise of reasonable care should be known, to be
18 untrue or misleading, or for any such person, firm, or corporation to so make or disseminate or cause
19 to be so made or disseminated any such statement as part of a plan or scheme with the intent not to
20 sell such personal property or services, professional or otherwise, so advertised at the price stated
21 therein, or as so advertised. . . ."

22 15. Prior to its amendment in 2001, Civil Code section 2948.5 provided, in relevant part,
23 that: "Interest on the principal obligation of a promissory note secured by a mortgage or deed of
24 trust on real property improved with one-to-four residential dwelling units shall not commence to
25 accrue prior to close of escrow if the loan proceeds are paid into escrow or, if there is no escrow, the
26 date upon which the loan proceeds have been made available for withdrawal as a matter of right, as
27 specified in subdivision (d) of Section 12413.1 of the Insurance Code." A person who violates Civil
28 Code section 2948.5 also is engaging in an unfair business practice within the meaning of Business

1 and Professions Code section 17200 and is in violation of the prohibition set forth in section 50204,
2 subdivision (i).

3 16. Between December 14, 1999, and March 20, 2002, Long Beach, as well as the
4 defendants named as DOES 1-25, charged its borrowers excess interest on 3,618 loans, in violation
5 of section 50204, subdivision (i), Business and Professions Code sections 17200 and 17500, and
6 Civil Code section 2948.5.

7 17. Defendants' pattern of conduct, as set forth above, demonstrates the necessity for
8 granting penalties pursuant to section 50501(a) for each of the 3,618 violations, in an amount of up
9 to \$2500 for each violation.

10 **SECOND CAUSE OF ACTION FOR VIOLATIONS OF**
11 **FINANCIAL CODE SECTION 50204(o)**
12 **(Against all Defendants)**

13 18. Plaintiff realleges and incorporates by reference paragraphs 1 through 17 of this
14 complaint as though fully set forth herein.

15 19. Section 50204, subdivision (o), (effective January 1, 2001) provides as follows:

16 "A licensee may not do any of the following: . .

17 (o) Require a borrower to pay interest on the mortgage loan for a period in excess
18 of one day prior to recording of the mortgage or deed of trust. Notwithstanding the
19 foregoing, if the borrower affirmatively requests, and the lender agrees, that the recording
20 will occur on Monday, or a day immediately following a bank holiday, interest may
21 commence to accrue on the business day immediately preceding the day of recording,
22 provided the following is disclosed to the borrower in writing: (1) the amount of additional
23 per diem interest charged to accommodate recording on Monday or the day following a
24 holiday, as the case may be, and (2) that it may be possible to avoid the additional per diem
25 interest charge by recording the loan or deed of trust on a day immediately following a
26 business day. This disclosure shall be provided to the borrower when the parties establish the
27 recording date, and the borrower shall acknowledge the additional interest charge by signing
28 the disclosure instrument."

20. As stated in the First Cause of Action, above, between December 14, 1999, and March 20, 2002, Long Beach, as well as the defendants named as DOES 1-25, charged its borrowers excess interest on 3,618 loans, in violation of section 50204, subdivision (i). In addition, after January 1, 2001, the interest charged for a period in excess of one day prior to recording of the mortgage or deed of trust also violated section 50204, subdivision (o).

21. Defendants' pattern of conduct, as set forth above, demonstrates the necessity for granting penalties pursuant to section 50501(a), in the alternative, for each of the 2,579 violations that occurred after January 1, 2001, the effective date of section 50204(o), in an amount of up to \$2500 for each violation.

PRAYER

WHEREFORE, plaintiff prays for judgment as follows:

1. That, pursuant to section 50501, subdivision (a), Long Beach, and DOES 1-25, be assessed a civil penalty of \$2,500 for each act in violation of section 50204, subdivision (i), in an amount of \$9,045,000, or according to proof.

2. That, pursuant to section 50501, subdivision (a), in the alternative for the transactions that occurred after January 1, 2001, Long Beach, and DOES 1-25, be assessed a civil penalty of \$2,500 for each act in violation of section 50204, subdivision (o), in an amount of \$6,447,500, or according to proof.

3. That Long Beach be required to refund, to the extent to which refunds have not already been made, the excess interest amount to all borrowers charged the excess interest amount.

4. That Plaintiff recovers its costs and reasonable attorneys' fees.

5. For such other and further relief as the nature of the case may require and the Court deems proper.

Dated: November 21, 2002

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By _____
MARK E. HARMAN, Senior Corporations
Counsel, Attorneys for Plaintiff